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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 ELLA C. RAMIREZ,

10 Plaintiff,

11 vs.

12 LITTON LOAN SERVICING LP;
13 PENNY MAC LOAN SERVICES, LLC,

14 Defendants.
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No. CV-09-0319-PHX-GMS

ORDER

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17 Pending before the Court is the Motion to Dismiss of Defendant Litton Loan Servicing
18 (Dkt. # 5), which has been joined by Defendant Penny Mac Loan Services (Dkt. # 7). For
19 the reasons set forth below, the Court grants the Motion.

20 Plaintiff Ella C. Ramirez is an Arizona resident who allegedly owns a home in
21 Arizona. Defendants Litton Loan Servicing and Penny Mac Loan Services are financial
22 institutions that allegedly were or are involved in some manner with the financing of
23 Plaintiff's home. In her Complaint, Plaintiff alleges that, while she owes over \$349,000 from
24 the first and second mortgages on her home, the value of her property has decreased to
25 \$250,000. Consequently, Plaintiff seeks to renegotiate the terms of her home financing with
26 Defendants and claims that she has been unable to do so. Plaintiff thus filed suit against
27 Defendants in the Superior Court of Arizona seeking a court order compelling that
28 "Defendant[s] . . . negotiate with the Plaintiff in an endeavor to achieve a reorganization of

1 the Plaintiff's home mortgage." (Dkt. # 1 Pt. 2 at 8.) The Complaint alleges that pursuant
2 to the Emergency Economic Stabilization Act of 2008 ("EESA"), 12 U.S.C. §§ 5201 *et seq.*,
3 Defendants have a duty to renegotiate the terms of her mortgage contracts. (Dkt. # 1 Pt. 2.
4 at 8.) Defendants removed the case to this Court and moved to dismiss Plaintiff's Complaint
5 for failing to state a claim upon which relief could be granted.

6 A complaint may be dismissed for failure to state a claim under Federal Rule of Civil
7 Procedure 12(b)(6) for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient
8 facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
9 (9th Cir. 1990). Here, Defendants argue that Plaintiff's sole claim under the EESA must be
10 dismissed because the EESA does not "impose any duties or obligations on private loan
11 servicers." (Dkt. # 5 at 1; Dkt. # 7 at 4.) Plaintiff responded by reasserting that Defendants
12 are obligated to renegotiate the terms of her loans. (Dkt. # 16 at 2.)¹

13 Despite claiming that the EESA creates a "duty to act in the best interest of the
14 financial institutes [sic] stockholders, the taxpayers and the mortgage holder," (Dkt. # 1 Part
15 2 at 8) Plaintiff fails to point to any provision in the EESA that grants a private right of action
16 to debtors to compel lenders to renegotiate principal balances or interest rates. The EESA
17 is, in part, "[a]n Act to provide authority for the Federal Government to purchase and insure
18 certain types of troubled assets for the purposes of providing stability to and preventing
19 disruption in the economy and financial system and protecting taxpayers." Emergency
20 Economic Stabilization Act of 2008, Pub. L. No. 101-343, introductory cmt. To the extent
21 that the Secretary of the Treasury has acquired mortgages, mortgage-backed securities, and
22 other assets secured by residential real estate, the EESA may accommodate reasonable loan
23 modifications and assistance for homeowners. *See* 12 U.S.C. § 5219. These
24 accommodations, however, do not extend to the circumstances of this case because Plaintiff
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26 ¹ Plaintiff also argues that Defendants have not demonstrated the standing necessary
27 to file their Motion to Dismiss. (Dkt. # 16 at 3.) This argument has no merit. Plaintiff named
28 Defendants as parties, and by doing so she gave them a right to respond and seek dismissal
of her Complaint.


1 seeks to compel modification of mortgages issued and presently held by private businesses.
2 Plaintiff has thus failed to plead a “cognizable legal theory.”

3 **IT IS THEREFORE ORDERED** that Defendants’ Motion to Dismiss (Dkt. ## 5,
4 7) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that Plaintiff’s Complaint (Dkt. # 1 Pt. 2 at 7-11) is
6 **DISMISSED**.

7 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to terminate this
8 matter.

9 DATED this 22nd day of June, 2009.

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13 G. Murray Snow
14 United States District Judge
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